



Ministry
of Defence



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22 June 2017 Our Reference: FOI2017/05344

[REDACTED]

Thank you for your letter dated 21 April 2017 and received by the Ministry of Defence (MOD) on 9 May 2017. You asked for information relating to Tender Reference LSL/DC/0006: Supply of Knitwear.

I am treating your email as a request for information in accordance with the Freedom of Information Act 2000 (FOIA). A search for the information has now been completed within the MOD, and I can confirm that information in scope of your request is held.

In my letter to you dated 17 May 2017, I advised that we considered that some of the information fell within the scope of the following qualified exemption: Section 43 (*Commercial Interests*). As such, it would be necessary for us to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

We have now completed this work and I can tell you that we have concluded that information concerning the award criteria and certain communications to and from [MOD] with us and other bidders (see also below) falls entirely within the scope of the qualified exemptions provided for at Section 43(2) (Commercial Interests) of the FOIA and has been withheld.

Section 43(2) provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any organisation or person holding it, including the MOD and its contractors.

The FOI Act contains a presumption in favour of disclosure and there is a public interest in the release of information which supports the accountability of the MOD for its use of public money; for example, to demonstrate that value for money is being obtained for taxpayers and that effective contractual processes are in place. Greater transparency of decision-making processes makes government more accountable and the release of information would allow an increased public understanding of how the procurement processes are undertaken in an open and honest way.

However, the Public Interest Test also recognised that releasing tender award criteria information and correspondence between tender bidders could weaken the MOD's position in

a competitive environment by revealing market sensitive information which would be of use to potential contract bidders. More widely, it could result in companies generally being deterred from sharing commercially sensitive information with the MOD if they are unsure about whether their information would be protected.

Accordingly, the Public Interest Test concluded that the release of this information would prejudice the commercial interests of the MOD and that the balance of the arguments lay in favour of withholding the information to protect the commercial interests of the MOD and its customers. Consequently, the information has been withheld. I have considered it necessary to apply the higher level of prejudice against release of the exempted information at "would" rather than "would be likely to".

To address the specific points raised in your letter:

Q1a-1b: No meetings were held in relation to the contract tender process and hence no records were taken.

Q1c-1e: You already hold a *Standard Notice of Contract Award Decision Tender* letter (Reference LSL/DC/0006) for TW Kempton (Corporate Clothing) Ltd sent to you on 12 April 2017. Copies of similar letters sent to other bidders have been withheld under Section 43 (Commercial Interests).

You also hold copies of any questions received by DE&S from bidders during the contractual process and the answers provided by DE&S.

Q1f: This tender was undertaken under the public procurement regulations. Team members within Leidos Defence Clothing met to agree on the most appropriate procurement strategy in regards to this requirement, this included:

- Creating the evaluation criteria,
- Creating the ITT question set
- To agree the weighting of elements within the tender documentation
- Identifying the evaluation panel

This process was then approved by the internal Contract Award Board process.

Q1g: There were no amendments made to the rules and Public Contracts Regulations 2015 were followed.

Q1h: This information has been withheld under Section 43 (Commercial Interests).

Q1i: There were no amendments made to the rules and Public Contracts Regulations 2015 were followed.

Q1J: No such actions were undertaken.

Q1k-1l: I am withholding the names and experience of these persons in accordance with Section 40 (Personal Information) of the FOI Act. Section 40(2) has been applied in order to protect personal information as governed by the Data Protection Act 1998. Section 40 is an absolute exemption and there is therefore no requirement to consider the public interest in making a decision to withhold the information.

Q1m-1o: This information has been withheld under Section 43 (Commercial Interests).

If you are not satisfied with this response or you wish to complain about any aspect of the handling of your request, then you should contact me in the first instance. If informal resolution is not possible and you are still dissatisfied then you may apply for an independent internal review by contacting the Information Rights Compliance team, 1st Floor, MOD Main Building, Whitehall, SW1A 2HB (e-mail CIO-FOI-IR@mod.uk). Please note that any request for an internal review must be made within 40 working days of the date on which the attempt to reach informal resolution has come to an end.

If you remain dissatisfied following an internal review, you may take your complaint to the Information Commissioner under the provisions of Section 50 of the Freedom of Information Act. Please note that the Information Commissioner will not investigate your case until the MOD internal review process has been completed. Further details of the role and powers of the Information Commissioner can be found on the Commissioner's website, <http://www.ico.org.uk>.

Yours Sincerely,


DE&S Secretariat